

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

IRA D. SOCOL,)	
)	
Plaintiff,)	
)	Case No.: 3:18cv00090
v.)	
)	
ALBEMARLE COUNTY)	
SCHOOL BOARD, <i>et al.</i> ,)	
)	
Defendants.)	

RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION TO STRIKE

Defendants Albemarle County School Board and Matthew S. Haas, individually and in his official capacity as Superintendent of Albemarle County Public Schools, by counsel, submits this response in opposition to the plaintiff's motion to strike.

ARGUMENT

In their Supplemental Memorandum in Support of their Motion to Dismiss, the defendants attached four documents: the Report, the Statement, the Emails, and a fourth email from Mr. Socol to Dr. Haas acknowledging fault for not complying with the procurement policy and tendering his resignation. The Report, Statement, and Emails are all defined terms in the Complaint and proposed First Amended Complaint.

The court may consider documents attached or incorporated into the complaint, "as well as those attached to the motion to dismiss, so long as they are integral to the complaint and authentic." *See, e.g., Philips v. Pitt County Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009); *Witthohn v. Fed. Ins. Co.*, 164 F. App'x 395, 396–97 (4th Cir. 2006) (a court may consider

official public records, documents central to plaintiff's claim, and documents sufficiently referred to in the complaint so long as the authenticity of these documents is not disputed).

The plaintiff acknowledges that the Report and the Statement are “integral to and explicitly relied on in the complaint.” He takes issue, however, with the Court considering the documents identified as Emails attached as Exhibit C and the fourth email attached as Exhibit D.

The Court should consider the Emails attached as Exhibit C for the same reason that it should consider the Report and Statement. The plaintiff refers to these Emails to such a great extent in his complaint and proposed amended complaint that he creates a defined term with which to reference them. Moreover, the Emails are documents upon which the Report relies, in part, in reaching the conclusions stated in the Report and should be read together for completeness. As the Emails are “sufficiently referred to in the complaint,” and the plaintiff does not object to their authenticity in his motion to strike, the Court may properly rely upon them in ruling upon the motion to dismiss without converting the motion into a motion for summary judgment.

With respect to the email attached as Exhibit D, although it is evidence that even Mr. Socol believed that the School Board had a sufficient basis upon which to terminate his employment and that Mr. Socol's liberty interest violation and defamation claims are not well-founded, the defendants acknowledge that the use of the email in the motion to dismiss stage may have been premature. The defendants' do not, however, concede that the plaintiff has otherwise stated a claim for a violation of his liberty interest or defamation for the reasons articulated in their previous memoranda and in oral argument on their motion to dismiss.

CONCLUSION

For the foregoing reasons, defendants Albemarle County School Board and Matthew S. Haas, individually and in his official capacity as Superintendent of Albemarle County Public Schools, by counsel, move this Court to deny the plaintiff's motion to strike and for such other and further relief as the nature of this case may require and this Court deems appropriate.

Respectfully submitted,

ALBEMARLE COUNTY SCHOOL
BOARD and
MATTHEW S. HAAS, individually
and in his official capacity as
Superintendent of Albemarle County
Public Schools,

/s/ Jennifer D. Royer
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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 2019, I have electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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